UNITED STATES PATENT AND TRADEMARK OFFICE

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Washington, DC 20037-3202

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APR 0 1 2005

OFFICE OF PETITIONS

In re Application of   :
Lazarou et al.   :
Application No. 09/744,801   :   Decision on Petition
Filed: January 30, 2001   :
Attorney Docket No. Q62916   :

This a decision on the petition under 37 CFR 1.137(b), filed December 3, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

The above-identified application became abandoned for failure to submit formal drawings and the issue fee in a timely manner in reply to the Notice of Allowability and Notice of Allowance mailed October 23, 2001. Accordingly, the above-identified application became abandoned on January 24, 2002. A Notice of Abandonment was mailed on May 16, 2002.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply,
(2) the petition fee,
(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional,[1] and
(4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

The instant petition lacks item (1).

Petitioner filed a Request for Continued Examination under §1.114 (and RCE Fee) and submission (an amendment) as the proposed reply. However,the required reply is the reply sufficient to have avoided abandonment had such reply been timely filed. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

35 U.S.C. 151authorizes the acceptance of a delayed payment of the issue fee, if the issue fee "is submitted ... and the delay in payment is shown to have been unavoidable."

35 U.S.C. 41(a)(7) likewise authorizes the acceptance of an "unintentionally delayed payment of the fee for issuing each patent."

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[1] Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D).

Both 35 U.S.C. 41(a)(7) and 151 each require payment of the issue fee as a condition of reviving an application abandoned or patent lapsed for failure to pay the issue fee. A reply that serves to continue prosecution in an application, such as an RCE, is not sufficient to satisfy either §151 or 41(a)(7). The Commissioner does not have the authority to waive these statutory requirements.

Petitioner is advised that any issue fee paid with a request for reconsideration may be applied towards the issue fee required by a new Notice of Allowance. In order to have the issue fee applied towards any fees required by a future Notice of Allowance, written instructions including such a request must be filed in response to the new Notice of Allowance.
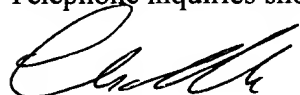
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
              Commissioner for Patents
              P.O. Box 1450
              Alexandria, VA 22313-1450

By facsimile: (703) 872-9306
               Attn: Office of Petitions

If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

Charles Steven Brantley
Petitions Attorney
Office of Petitions